

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 506 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

Santokben wd/o Vadilal Dayaram and others

Versus

Chandulal Fulchand

Appearance:

MR PK Pancholi for Petitioners

Mr. Viresh C Shah for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/03/2000

ORAL JUDGEMENT

This Revision Application has been filed
by the applicants-original defendants against the
judgment and decree dated 13.4. 1980 in Regular Civil
Suit No.242 of 1974 passed by the learned Civil Judge

(J.D.), Viramgam, decreeing the suit. By judgment and order dated 10th February, 1983, the 2nd Extra Assistant Judge, Ahmedabad (Rural), dismissed Civil Appeal No. 55 of 1980 confirming the findings recorded by the trial court.

2. The respondent-original plaintiff filed Regular Civil Suit No.242 of 1974 against the petitioner in the capacity of Karta of a Joint Hindu family for the recovery of the possession of the land of survey no. 831 and 831 of city Tikka no. 7 situated in Parkota Maholla of Viramgam Town which was purchased by the plaintiff and one Bai Mena widow of Patel Ishwardas Kalidas jointly. After the death of Bai Mena, the land in dispute came to the share of the plaintiff's joint Hindu family in the partition. The respondent filed the suit in the capacity as Karta of JointHindu Family. The land is an open land in two plots. The deceased Vadilal Dayaram was the monthly tenant of the plaintiff for one plot only. After the death of Vadilal Dayaram, the defendants-petitioners are the statutory tenants of the plaintiff of the open land of the said plot on the assertion that the suit land was to be used as open land to place the dung-cakes and firewood. The defendants or the deceased Vadilal had no right to construct any pucca construction in the suit land and the said construction is the pucca construction without permission of the respondent-plaintiff. Hence, the respondent-plaintiff was entitled to recover the possession of the suit land from the defendants. Moreover, the respondents-defendants instead of placing dung-cakes and firewoods on the suit land, have dug a big pit on the suit land and started preparing manure in the said pit which created nuisance and dirty smell in the vicinity and that also reduced the price of the suit land. On the ground that this is nuisance and change of user of the suit land, the plaintiff is also entitled to recover the possession of the suit land. Thirdly, the respondent-plaintiff requires the land for reasonable and bonafide purpose of personal use for expansion of their business of cotton and cotton nuds by erecting a godown and a compound wall to store cotton and cotton nuds.

2. The suit was contested by the petitioners-defendants. The trial court framed 10 issues in the suit. After considering the evidence on record, the trial court came to the conclusion that the petitioners are tenants of the suit property. The respondent-plaintiff could not prove that the defendants had dug a pit in the suit plot creating nuisance. The trial Judge has recorded a finding that the respondent requires the suit premises reasonably and bonafide for

erecting a new building as per section 13(1)(1) of the Bombay Rent Act. The trial court also examined hardship and came to the conclusion that the petitioners would suffer greater hardship if decree for eviction is refused. The plaintiff could not prove that the defendants had used the suit land for the purpose for which it was let out for a continuous period of six months immediately preceding the date of the suit. The defendants could not prove that Bombay Tenancy and Agricultural Lands Act would be applicable to the proceedings of the suit instead of Bombay Rent Act. The trial court also recorded a finding that the trial court has jurisdiction to try the suit. It was also held that the respondent-plaintiff is entitled to recover the possession from the petitioners-defendants.

3. The petitioners being aggrieved by the said judgment and decree of the learned trial Judge, filed Regular Civil Appeal No.55 of 1980 before the District Court, Ahmedabad (Rural). However, the learned 2nd Extra Assistant Judge, Ahmedabad (Rural) at Narol by his judgment and order dated 10th February, 1983 confirmed the findings recorded by the trial court. The lower appellate court framed the following two points for its determination.

- (1) Whether the learned Judge has erred in concluding that the plaintiff proves and requires suit premises for his personal bonafide use and occupation ?
- (2) Whether the learned Judge has erred in concluding that the plaintiff would suffer greater hardship on the consideration of balance of convenience and whether erred in concluding that landlord would suffer greater hardship ?

The lower appellate court thoroughly considered both the points and answered in the negative. After going through the evidence on record, the lower appellate court came to the conclusion that the landlord has been able to establish that he has a bonafide and reasonable requirement of the suit plot and the trial Court has not committed any mistake. Thus, the lower appellate court has confirmed the findings of the trial court. Comparative hardship was also considered by the lower appellate court and it came to the conclusion that it cannot be said that hardship becomes greater in favour of the tenant. As against that if decree is refused, the plaintiff landlord, though has his land of the ownership and which exactly suits proposed business of cotton nods, he would be denied the right to use the same.

5. No one appears on behalf of the petitioners to press this Civil Revision Application. I have heard the learned advocate Mr. Shah for the respondent-original plaintiff.

6. I have carefully considered the entire facts and circumstances of the case. In my view, both the courts below have recorded concurrent findings regarding bonafide and reasonable requirement of the suit land by the respondent-plaintiff. The question of hardship has also been considered by both the courts below. I do not find anything on record to interfere with the concurrent findings recorded by both the courts below. In the facts and circumstances of the case, this Revision Application is liable to be dismissed. Accordingly, this Revision Application is dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated forthwith.

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